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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/594,697	06/16/2000	Robert Lee Fitzsimmons JR.	VULC-004/00US	2303

22903 7590 04/20/2004

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RESTON, VA 20190-5061

EXAMINER

YOUNG, JOHN L

ART UNIT	PAPER NUMBER
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3622

DATE MAILED: 04/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/594,697

Applicant(s)

FITZSIMMONS, ROBERT LEE

Examiner

John L Young

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 22 October 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

JOHN LEONARD YOUNG, ESQ.  
PRIMARY EXAMINER

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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## **REQUEST FOR CONTINUED EXAMINATION (RCE)**

1. The request filed on 10/22/2003 for continued examination (RCE) under 37 CFR 1.114 based on parent Application No. 09/594,697 is acceptable and an (RCE) has been established. An action on the (RCE) follows:

## **NON-FINAL ACTION REJECTION ON RCE**

### **DRAWINGS**

2. This application has been filed with drawings that are considered informal; said drawings are acceptable for examination purposes. The review process for drawings that are included with applications on filing has been modified in view of the new requirement to publish applications at eighteen months after the filing date of applications, or any priority date claimed under 35 U.S.C. §§119, 120, 121, or 365.

## **CLAIM REJECTIONS — 35 U.S.C. §101**

35 U.S.C. §101 reads as follows:

Whoever invents or discovers any new and useful  
process, machine, manufacture, or composition of matter or  
any new and useful improvement thereof, may obtain a

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patent therefore, subject to the conditions and requirements  
of this title.

3. Claims 1-8 are rejected under 35 U.S.C. 101, because said claims are directed to non-statutory subject matter.

As per claims 1-8, as drafted said claims are not limited by language within the technological arts (see *In re Waldbaum*, 173 USPQ 430 (CCPA 1972); *In re Musgrave*, 167 USPQ 280 (CCPA 1970) and *In re Johnston*, 183 USPQ 172 (CCPA 1974) also see MPEP 2106 IV 2(b), even though said claims may be limited to a useful, concrete and tangible application (See *State Street v. Signature financial Group*, 149 F.3d at 1374-75, 47 USPQ 2d at 1602 (Fed Cir. 1998) ; *AT&T Corp. v. Excel*, 50 USPQ 2d 1447, 1452 (Fed. Cir. 1999).

Note: it is well settled in the law that "[although] a claim should be interpreted in light of the specification disclosure, it is generally considered improper to read limitations contained in the specification into the claims. See *In re Prater*, 415, F.2d 1393, 162 USPQ 541 (CCPA 1969) and *In re Winkhaus*, 527 F.2d 637, 188 USPQ 129 (CCPA 1975), which discuss the premise that one cannot rely on the specification to impart limitations to the claims that are not recited in the claims." (See MPEP 2173.05( q )).

In this case, the claim language is merely non-functional descriptive material disembodied from the technological arts (i.e., communications network art) and the claims

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suffer from undue breadth.

#### **PRIOR ACTION CLAIM REJECTIONS — 35 U.S.C. §103( a )**

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1-14 are rejected under 35 U.S.C. §103( a ) as being obvious over Merrill US 5,333,257 (07/26/1994) (herein referred to as "Merrill") in view of Sehr US 6,085,976 (7/11/2000) [US f/d: 5/22/1998] (herein referred to as "Sehr").

As per claim 1, Merrill (the ABSTRACT; FIG. 6; FIG. 15; col. 1, ll. 5-35; col. 2, ll. 1-67; col. 3, ll. 1-67; and col. 8, ll. 10-22) discloses "public space"; and "artifacts." In this case the Examiner interprets the plurality of identified seating choices as showing "an identifier-associaed with one of the artifacts. . . ."

Merrill lacks an explicit recitation of the "recording in a memory, an identifier. . .

."

Sehr (the ABSTRACT; FIG. 2; col. 1, ll. 13-42; col. 3, ll. 60-67; col. 4, ll. 33-43- col. 4, ll. 54-67; and col. 5, ll. 1-11) shows "recording in a memory, an identifier. . . ."

Sehr proposes "recording" modifications that would have applied to the system of Merrill. It would have been obvious to a person of ordinary skill in the art the time of the invention to combine the teachings of Sehr with the disclosure of Merrill because such

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combination would have provided means that *"allows the ticket customer to see an approximation of that view for a particular event configuration. . . ."* (see Merrill (col. 1, ll. 31-33)) and because such combination would have provided *"a portable . . . card to store, process and communicate cardholder data . . . and electronic payment means. . . ."* (see Sehr (Col. 3, ll. 1-4)).

Merrill lacks an explicit recitation of "responsive to the recorded identifier, providing access to additional information relating to the artifacts associated with the recorded identifiers."

Sehr (the ABSTRACT; FIG. 2; col. 1, ll. 13-42; col. 2, ll. 5-67; col. 3, ll. 1-67; col. 4, ll. 1-67; and col. 5, ll. 1-11) in view of Merrill (the ABSTRACT; FIG. 6; FIG. 15; col. 1, ll. 5-35; col. 2, ll. 1-67; col. 3, ll. 1-67; and col. 8, ll. 10-22) shows "responsive to the recorded identifier, providing access to additional information relating to the artifacts associated with the recorded identifiers."

Sehr proposes "recorded identifier" modifications that would have applied to the system of Merrill. It would have been obvious to a person of ordinary skill in the art the time of the invention to combine the teachings of Sehr with the disclosure of Merrill because such combination would have provided means that *"allows the ticket customer to see an approximation of that view for a particular event configuration. . . ."* (see Merrill (col. 1, ll. 31-33)) and because such combination would have provided *"a portable . . . card to store, process and communicate cardholder data . . . and electronic payment*

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*means. . . .*" (see Sehr (Col. 3, ll. 1-4)); furthermore, such combination would have rendered the instant invention obvious because the instant invention suffers from undue breadth.

As per claim 2, Merrill in view of Sehr shows the method of claim 1. (See the rejection of claim 1 supra).

Merrill lacks an explicit recitation of the elements and limitations of claim 2.

Sehr (col. 3, ll. 1-4) shows elements that suggest the elements and limitations of claim 2.

Sehr proposes "portable selection device" modifications that would have applied to the system of Merrill. It would have been obvious to a person of ordinary skill in the art the time of the invention to combine the teachings of Sehr with the disclosure of Merrill because such combination would have provided means that *"allows the ticket customer to see an approximation of that view for a particular event configuration. . . ."* (see Merrill (col. 1, ll. 31-33)) and because such combination would have provided *"a portable . . . card to store, process and communicate cardholder data . . . and electronic payment means. . . ."* (see Sehr (col. 3, ll. 1-4)); furthermore, such combination would have rendered the instant invention obvious because the instant invention suffers from undue breadth.

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As per claim 3, Merrill in view of Sehr shows the method of claim 2. (See the rejection of claim 2 supra).

Merrill lacks an explicit recitation of the elements and limitations of claim 3.

Sehr (col. 41, ll. 45-50) shows elements that suggest the elements and limitations of claim 3.

Sehr proposes "profile" modifications that would have applied to the system of Merrill. It would have been obvious to a person of ordinary skill in the art the time of the invention to combine the teachings of Sehr with the disclosure of Merrill because such combination would have provided means that *"allows the ticket customer to see an approximation of that view for a particular event configuration. . . ."* (see Merrill (col. 1, ll. 31-33)) and because such combination would have provided *"a portable . . . card to store, process and communicate cardholder data . . . and electronic payment means. . . ."* (see Sehr (col. 3, ll. 1-4)); furthermore, such combination would have rendered the instant invention obvious because the instant invention suffers from undue breadth.

As per claim 4, Merrill in view of Sehr shows the method of claim 1. (See the rejection of claim 1 supra).

Merrill lacks an explicit recitation of the "Internet" elements and limitations of claim 4.



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Sehr (Col. 1, ll. 38-42; col. 5, ll. 1-3; col. 7, ll. 15-25; col. 17, ll. 28-32; and col. 21, ll. 25-26) shows elements that suggest the "Internet" elements and limitations of claim 4.

Sehr proposes "Internet" modifications that would have applied to the system of Merrill. It would have been obvious to a person of ordinary skill in the art the time of the invention to combine the teachings of Sehr with the disclosure of Merrill because such combination would have provided means that *"allows the ticket customer to see an approximation of that view for a particular event configuration. . . ."* (see Merrill (col. 1, ll. 31-33)) and because such combination would have provided *"a portable . . . card to store, process and communicate cardholder data . . . and electronic payment means. . . ."* (see Sehr (col. 3, ll. 1-4)); furthermore, such combination would have rendered the instant invention obvious because the instant invention suffers from undue breadth.

As per claims 5-8, Merrill in view of Sehr shows the method of claim 1. (See the rejection of claim 1 supra).

Merrill (the ABSTRACT; FIG. 6; FIG. 15; col. 1, ll. 5-35; col. 2, ll. 1-67; col. 3, ll. 1-67; and col. 8, ll. 10-22) in view of Sehr (the ABSTRACT; FIG. 2; col. 1, ll. 13-42; col. 3, ll. 60-67; col. 4, ll. 33-43- col. 4, ll. 54-67; and col. 5, ll. 1-11) shows elements that suggest the elements and limitations of claims 5-8.

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Merrill in view of Sehr lacks an explicit recitation of the elements and limitations of claims 5-8, even though Merrill in view of Sehr suggests same.

"Official Notice" is taken that both the concepts and the advantages of the elements and limitations of claims 5-8 were well known and expected in the art by one of ordinary skill at the time of the invention because such concepts and advantages would have provided means that *"allows the ticket customer to see an approximation of that view for a particular event configuration. . . ."* (see Merrill (col. 1, ll. 31-33)) and because such combination would have provided *"a portable . . . card to store, process and communicate cardholder data . . . and electronic payment means. . . ."* (see Sehr (col. 3, ll. 1-4)); furthermore, the combination of references applied would have rendered the instant invention obvious because the claims at issue of the instant invention suffer from undue breadth.

As per claim 9 Merrill (the ABSTRACT; FIG. 6; FIG. 15; col. 1, ll. 5-35; col. 2, ll. 1-67; col. 3, ll. 1-67; and col. 8, ll. 10-22) discloses "public space"; and "artifacts." In this case the Examiner interprets the plurality of identified seating choices as showing "a unique identifier associaed with an artifact.when positioned within the public space . . . ."

Merrill lacks an explicit recitation of the "record in a memory associated with the portable electronic selection device a unique identifier associated with an artifact. . . ."

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Sehr (the ABSTRACT; FIG. 2; col. 1, ll. 13-42; col. 3, ll. 60-67; col. 4, ll. 33-43- col. 4, ll. 54-67; and col. 5, ll. 1-11) shows "recording in a memory, an identifier. . . ."

Sehr proposes identifier recording modifications that would have applied to the system of Merrill. It would have been obvious to a person of ordinary skill in the art the time of the invention to combine the teachings of Sehr with the disclosure of Merrill because such combination would have provided means that *"allows the ticket customer to see an approximation of that view for a particular event configuration. . . ."* (see Merrill (col. 1, ll. 31-33)) and because such combination would have provided *"a portable . . . card to store, process and communicate cardholder data . . . and electronic payment means. . . ."* (see Sehr (Col. 3, ll. 1-4)).

Merrill lacks an explicit recitation of "an application adapted to receive a recorded unique identifier and to enable access to additional information relating to the artifacts associated with the received recorded unique identifier."

Sehr (the ABSTRACT; FIG. 2; col. 1, ll. 13-42; col. 2, ll. 5-67; col. 3, ll. 1-67; col. 4, ll. 1-67; and col. 5, ll. 1-11) in view of Merrill (the ABSTRACT; FIG. 6; FIG. 15; col. 1, ll. 5-35; col. 2, ll. 1-67; col. 3, ll. 1-67; and col. 8, ll. 10-22) shows "an application adapted to receive a recorded unique identifier and to enable access to additional information relating to the artifacts associated with the received recorded unique identifier."

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Sehr proposes "recorded unique identifier" modifications that would have applied to the system of Merrill. It would have been obvious to a person of ordinary skill in the art the time of the invention to combine the teachings of Sehr with the disclosure of Merrill because such combination would have provided means that *"allows the ticket customer to see an approximation of that view for a particular event configuration. . . ."* (see Merrill (col. 1, ll. 31-33)) and because such combination would have provided *"a portable . . . card to store, process and communicate cardholder data . . . and electronic payment means. . . ."* (see Sehr (Col. 3, ll. 1-4)); furthermore, such combination would have rendered the instant invention obvious because the instant invention suffers from undue breadth.

As per claim 10, Merrill in view of Sehr shows the method of claim 9. (See the rejection of claim 9 supra).

Merrill lacks an explicit recitation of the "portable selection device" elements and limitations of claim 10.

Sehr (col. 3, ll. 1-4) shows elements that suggest the "portable selection device" elements and limitations of claim 10.

Sehr proposes "portable selection device" modifications that would have applied to the system of Merrill. It would have been obvious to a person of ordinary skill in the art the time of the invention to combine the teachings of Sehr with the disclosure of

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Merrill because such combination would have provided means that *"allows the ticket customer to see an approximation of that view for a particular event configuration. . . ."* (see Merrill (col. 1, ll. 31-33)) and because such combination would have provided *"a portable . . . card to store, process and communicate cardholder data . . . and electronic payment means. . . ."* (see Sehr (col. 3, ll. 1-4)); furthermore, such combination would have rendered the instant invention obvious because the instant invention suffers from undue breadth.

As per claims 11-14, Merrill in view of Sehr shows the method of claim 9. (See the rejection of claim 9 supra).

Merrill (the ABSTRACT; FIG. 6; FIG. 15; col. 1, ll. 5-35; col. 2, ll. 1-67; col. 3, ll. 1-67; and col. 8, ll. 10-22) in view of Sehr (the ABSTRACT; FIG. 2; col. 1, ll. 13-42; col. 3, ll. 60-67; col. 4, ll. 33-43- col. 4, ll. 54-67; and col. 5, ll. 1-11) shows elements that suggest the elements and limitations of claims 11-14.

Merrill in view of Sehr lacks an explicit recitation of the elements and limitations of claims 5-8, even though Merrill in view of Sehr suggests same.

"Official Notice" is taken that both the concepts and the advantages of the elements and limitations of claims 11-14 were well known and expected in the art by one of ordinary skill at the time of the invention because such concepts and advantages would have provided means that *"allows the ticket customer to see an approximation of that view for a particular event*

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*configuration. . . .*"(see Merrill (col. 1, ll. 31-33)) and because such combination would have provided *"a portable . . . card to store, process and communicate cardholder data . . . and electronic payment means. . . ."* (see Sehr (col. 3, ll. 1-4)); furthermore, the combination of references applied would have rendered the instant invention obvious because the claims at issue of the instant invention suffer from undue breadth.

### RESPONSE TO ARGUMENTS

5. Applicant's arguments/request for reconsideration (paper#17, filed 10/22/2003) concerning the obviousness rejections in the prior Office action have been considered but are not persuasive for the following reasons:

Applicant's arguments (paper#17) are moot based on new grounds of rejection introduced herein by the Examiner.

As per claims 5-8 and 11-14, Applicant's arguments (paper#17) are moot because Applicant failed to seasonably challenge the Official Notice evidence in a prior Office action.

Serial Number: 09/594,697

(Fitzsimmons)

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## CONCLUSION

6. Any response to this action should be mailed to:

Commissioner for Patents  
P. O. Box 1450  
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Any response to this action may be sent via facsimile to either:

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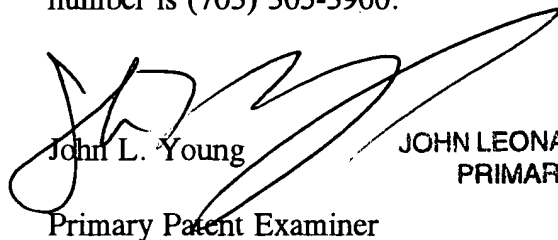
Any inquiry concerning this communication or earlier communications from the examiner should be directed to John L. Young who may be reached via telephone at (703) 305-3801. The examiner can normally be reached Monday through Friday

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between 8:30 A.M. and 5:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber, may be reached at (703) 305-8469.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-3900.

  
John L. Young  
Primary Patent Examiner

JOHN LEONARD YOUNG, ESQ.  
PRIMARY EXAMINER

April 13, 2004